

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

FILED

2008 MAR 12 A 8:47

UNITED STATES OF AMERICA)

v.)

DARIEN MCKIBBEN)

Case No. 1:91-cr-115-05
Judge Edgar

U.S. DISTRICT COURT
EASTERN DIST. TENN.
BY [Signature] DEPT. CLERK

ORDER

Defendant and federal prisoner Darrien McKibben ("McKibben") has made a *pro se* motion to modify and reduce his term of imprisonment pursuant to 18 U.S.C. § 3582(c)(2) based on a retroactive application of Amendment 706 to the United States Sentencing Guidelines. [Doc. No. 407]. The United States government has filed its response. [Doc. No. 415].

In accordance with Standing Order No. SO-08-02 of this Court, Federal Defender Services of Eastern Tennessee ("FDS") is appointed to represent McKibben. On or before **April 11, 2008**, FDS shall file a reply brief. FDS shall advise the Court whether it agrees or disagrees with the government's response and legal analysis.

If McKibben and the government are able to reach an agreement concerning what they believe is a proper disposition of the motion, they may submit a joint recommendation and tender a proposed agreed order for the Court's consideration. The ultimate decision on the motion is in the Court's discretion under 18 U.S.C. § 3582(c)(2).

After FDS files its reply brief, the Probation Office shall prepare and provide to the Court and to counsel for the parties a supplemental sentencing report or Sentence Modification Report that addresses the following issues:

- (1) A summary of the procedural history of the sentencing decisions, including whether the original sentence was imposed pursuant to *United States v. Booker*, 543 U.S. 220 (2005), reflected any departures or variances, or was reduced under U.S.S.G. § 5K1.1 or Fed. R. Crim. P. 35(b);
- (2) The original Sentencing Guideline calculation, and a recalculation of the Guideline range in accordance with U.S.S.G. § 1B1.10 and Amendment 706 as amended by Amendment 711 to the Sentencing Guidelines;
- (3) A statement whether the movant is eligible for a reduction of sentence under 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10 based on a retroactive application of Amendments 706 and 711, and the basis and reasons for reaching that conclusion;
- (4) Any information available to the Probation Office from the United States Bureau of Prisons concerning the movant's post-sentencing conduct or misconduct while imprisoned in federal custody;
- (5) Any information available to the Probation Office concerning relevant public safety considerations, including the danger to any person or the community that may be posed by a reduction in the term of imprisonment. This includes information concerning the need to protect the public from the commission of further crimes by the movant; and
- (6) A recommendation for the Court's disposition of the 18 U.S.C. § 3582(c)(2) motion.

If a party has any objection to the Sentence Modification Report prepared by the Probation

Office, all objections shall be filed in writing with the Court within ten (10) days after receipt of the report. The opposing party shall file a response to the objections within seven (7) days after the objections are filed.

SO ORDERED.

ENTER this the 11th day of March, 2008.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE